Supreme Court, U. S.
FILED
APR 15 1980
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-1615

GROVER C. HALL,

Appellant

vs.

THE STATE OF CALIFORNIA, ROBERT A. MOODY, ALBERT RAY BARBARA ROSEN, DARRYL BRAY, RICHARD L. CAMILLI, EMPLOYEES OF THE STATE OF CALIFORNIA,

Appellees.

APPEAL TO THE UNITED STATES SUPREME COURT
FROM THE DECISION OF
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

GROVER C. HALL
In Propria Persona
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AUTHORITIES CITED

Cases

1. Glicker v. Mich. Liquor Control Comm., 100 F.2d at 96 (1947).

2. McWilliams v. Gladden, 407 P.2d at 833, 242 or 353 (1965).

3. Neely v. Cal. St. Personnel Bd., 257 S.A.2d at 487, 47 Cal.Rptr. (1965).

4. Sessions v. St. of Conn., D.C. Comm., 293 F.Supp. 835, aff'd. 404 F.2d at 342 (1968).

5. Wilson v. City of Los Angeles, Cal. 351 2d 761, Cal.Rptr. 499 (1960).

6: Hines v. Winfree, A.2d 678, 408, Pa. 128 (1962).

Statutes and Regulations

Amendments 8, 13, 14 to the United States Constitution

The Equal Employment Opportunity Act of 1972: §§ 701(a); 703(a)(1)&(2); and 706(f)(1).

Cal. St. Personnel Bd. Laws & Rules Governing Civil Service (1970).

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1979

No.

GROVER C. HALL,

Appellant

vs.

THE STATE OF CALIFORNIA, et al.,

Appellees.

APPEAL TO THE UNITED STATES SUPREME COURT
FROM THE DECISION OF
THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

TO THE CHIEF JUSTICE AND THE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

Your Appellant, GROVER C. HALL, hereby appeals for a complete review of this case. And in the interest of justice assume jurisdiction. And render your decision. This case has been under litigation since March, 1973. Unusual action in the Federal Courts in California makes it questionable whether justice can be rendered in California.

OPINIONS BELOW

The memorandum decision of the Court of Appeals has been published and dated February 6, 1980. It is appended hereto as Appendix A. The memorandum decision of U.S.D.C. in Hall, I II is appended as Appendix C. The memorandum decision of U.S.D.C. in Hall, I is appended as Appendix E. The memorandum decision of U.S.C.A. is appended as Appendix D.

JURISDICTION

The judgment of the Court of Appeals from which appeal is made for review was published and dated February 6, 1980. I received my copy of that decision on February 23, 1980 which was too late to petition for a rehearing. The statutory provision believed to confer jurisdiction on this Court to review the judgment in question is 28 USC § 1254.

QUESTIONS PRESENTED FOR REVIEW

1. Does the filing of a complaint in the United States District Court under the Equal Employment Opportunity Act of 1972

without first obtaining the "Right-To-Sue" from the proper source, according to Section 706(f)(1) of the E.E.O.C. Act of 1972 constitute improper procedure? If so, then does such improper procedure render any and all action on that complaint null and void?

2. Does the practice of firing an employee; later sending to that employee a list of charges as reasons why he was fired; then, offer to him an opportunity to appeal for an Administrative Hearing satisfy the meaning and spirit of the Due Process Clause of the 14th Amendment of the United States Constitution?

3. Three men, two black and one white, employed by the same agency are similarly situated in that they are accused of violating the same civil service regulation. The two black men are fired from their jobs. The White man is not fired. Is this discrimination sufficient to warrant Federal Court jurisdiction under the E.E.O.

Act of 1972?

STATEMENT OF THE CASE

On December 13, 1972 at or about 8:00 a.m., I went to my office to work as a Disability Determination Counselor with the Disability Determination Program, a California State Agency. Upon arriving at my office a clerk informed me that Mr. Albert Ray, the Administrator wanted to see me. I went immediately to Mr. Ray's office. There Mr. Ray told me that he was placing me on Administrative leave until further notice. And that I was to go home. And that I would be contacted later. I called a lawyer. He advised me to do what they say and not to anger them by further inquiry. It is clear they do not wish to tell you now . . . this was after I asked why?

I went home. About 9:30 a.m. Mr. Robert A. Moody, Program Director, called me. He told me that I was fired. I asked, for what? He told me I would re-

ceive written notices in a few days. Two weeks later on December 26, 1972, I received a document called "Notice of Punitive Action". I secured a lawyer who appealed for an Administrative Hearing which was held March 8-26, 1973. This is a fact finding hearing. The Hearing Officer presented his findings to the California State Personnel Board, who in turn adopted them. I personally appealed to the California State Personnel Board for reconsideration. They denied it.

I hired another lawyer who petitioned the Los Angeles Superior Court for a Writ of Mandate. He based his petition on the insufficiency of evidence, numerous errors, and abuse of discretion. This was denied. I had no more money. I represented myself in an appeal to both the California State Court of Appeals and the Calfornia Supreme Court. The final denial by the California Supreme Court was September 17, 1975.

While my case was under consider-

ation by the California Court of Appeals, I filed a charge of discrimination with the Equal Employment Opportunity Commission on or about February 15, 1974. The E.E.O. Commission assumed jurisdiction on May 12, 1974.

On September 25, 1975, I filed a Complaint under the E.E.O. Act of 1972 in the United States District Court for the Central District of California. I ignorantly failed to apply to the United States Attorney-General's Office for the document called the "Right to Sue", in accordance with Section 706(f)(1) of the E.E.O. Act of 1972. The United States District Judge, Irving Hill, apparently treated this procedural error as a harmless error. He set a trial date, which was held on November 20, 1975. I learned sometime later that failure to follow the requirements of a Congressional Law cannot be treated as a harmless error. The Judge dismissed my case with prejudice. I appealed to the U.S.C.A. who affirmed the

U.S.D.C. decision. On reflection later, I felt that the U.S.D.C. Judge should have dismissed the case without prejudice on procedural grounds. I secured the "Right to Sue" and refiled my complaint in the U.S.D.C. It was dismissed with prejudice on the grounds that I had had my day in court. Again I appealed and am appealing to this Court from that decision.

POINT I

The Right To Sue, Congressional Law - E.E.O. Act of 1972, Section 706(f)(1).

The "Right to Sue" as required by this section was not obtained by me from the U.S. Attorney-General's Office when I filed case known as Hall (75-3314-IH) in the U.S.D.C. for the Central District of California. This was an error of ignorance on my part. For this reason I contend that this case was not properly before the U.S.D.C. This was a procedural error. When the case was assigned to U.S. District Judge Irvine Hill, he was

aware of this. At that time he did not know me nor had he seen me. Likewise, I did not know him. He apparently treated this case as a harmless error and set a trial date. This was a mistake because failure to follow the requirements of a Congressional Law cannot be treated as a harmless error. The U.S.D.C. had every resource at its command to determine whether the U.S. Attorney General's Office had issued to me a "Right to Sue". In addition, this was neglect on the part of the U.S.D.C. The Court should have checked this at the time of filing as it does so many other things. Under the circumstances, I cannot see how this Appellant could have possibly mislead the Court. The error was made before a trial date was set.

I further contend that since this case was not properly before the U.S.D.C. for procedural reasons, any and all action taken in this case is therefore

rendered null and void.

On the other hand, the case known as Hall (77-2911-AH), which was filed on August 4, 1977 in the same Court, U.S.D.C. did have as a part of its record the "Right to Sue" issued by the U.S. Attorney General's Office on July 22, 1977. I contend that this case (Hall [77-2911-AH]) was properly before the Court. And as such the U.S.D.C. did have jurisdiction. And the Appellant had not had his day in court. Because of Judge Hill's error in 1975, the Federal Courts in California have kept my case from coming to trial.

In my opinion, the error of Judge Hill was a deliberate and calculated error designed to so obstruct the movement of my case in Federal Court that I would never receive justice.

POINT II

The Due Process Clause of the 14th Amendment to the United States Constitution.

The State of California fired me from my job as a civil employee on December 13, 1972. I was notified of the reasons why on December 26, 1972. In addition I was given an opportunity to appeal for an Administrative Hearing. During a period of about two weeks I never knew why I was fired. I learned on December 26, 1972 that at or about 6:50 a.m. on December 13, 1972 I had threatened to kill my supervisor. I contend that some form of Due Process should have been exercised before I was fired on December 13, 1972. I further contend that I was fired on the accusation of a white woman. I was adjudged guilty after I was fired. I also contend that this casts suspicion and doubt on the firing.

POINT III

Discrimination, Congressional Law E.E.O. Act of 1972, Sections 703(a)(1)&(2).

The U.S.C.A. stated that I was fired for incompetence and insubordination. This was a finding of the Administrative Hearing after the fact. I contend that on December 13, 1972 I was accused of threatening to kill the Supervisor which is in violation of 19572 (m&t) of California State Civil Service Rules and Regulations. The charge of incompetence and all other charges were made two weeks later on December 26, 1972 . . . that violation is called mistreatment of a fellow employee or a member of the public, and off-duty shameful conduct.

On July 17, 1974, a white male employee for the same agency attacked a black woman with a knife. She was hospitalized for several months. (See L.A.S.C. Case No. C-121 907). He was and is not

fired. The employee is Michael Greewald.

In April, 1977, Gus Dixon, a black male clerk was accused by a white woman of threatening to kill her. (California State Personnel Board No. 8838). Mr. Dixon was fired.

It is to be noted that each of the two black men were accused of verbal threats. The white man was accused of an attack which is more aggravated. In the case of the two black men there is no evidence that they attempted not intended to carry out such threats.

I contend that this is discrimination based on race. And as such, the Federal Courts have jurisdiction under the E.E.O. Act of 1972.

On December 4, 1972, I was recommended by both the Supervisor and the Administrator for passing the probationary period of the promotional position as counselor. In addition, I was recommended

by the same people for a merit increase in salary. Then, on December 12, 1972, the same two people tried to get me to sign a sub-standard performance report. I raised the question: How can my work be commendable on December 4, 1972 and be sub-standard on December 12, 1972? I refused to sign it. Because this was a deliberate attempt to limit and circumscribe any further promotional opportunities to which I might aspire. This sub-standard performance report would be a mark against the quality of my work. This damaging bit of evidence could be presented to any review panel considering my application for a promotional position. This could be done by the Supervisor and Administrator per a secret up-to-date progress report. This could be done without the concerned employee's knowledge nor consent. The infamous Rule No. 200 in California State Civil Service makes that possible.

It is my opinion that my refusal to sign that sub-standard performance report so angered all concerned that they decided to frame me the next day (December 13, 1972) and accused me of threatening to kill the Supervisor.

POINT IV

The Equal Protection Clause of the 14th Amendment.

On November 29, 1972, I borrowed a memo from Barbara Rosen, the Supervisor, to make a photocopy for my file. Before 10:30 a.m. the same morning, the Supervisor accused me of refusing to return the memo. I simply stated to her that I was very busy and would get it done as soon as possible and at least during the noon hour. For this I was penalized two and one-half days without pay.

I contend that this was no insubordination within the meaning of the law. See Neely v. Cal. St. Personnel Bd., P.237

Cal.App.2d 87, 47 Cal.Rptr. 63, 68 (1965). The Court ruled: "The term insubordination as used in said sub-division (e) has been broadly defined as follows: '. . . insubordination implies a general course of mutinous disrespectful or contumacious conduct. . . .'" Also, the courts have ruled that a charge of insubordination supported by a single incident is not supported by substantial evidence.

I contend that if this is the law as interpreted by the courts, I was not given equal protection under the law when I was penalized two and one-half days without pay. In addition, it was petty.

POINT V

Cruel and Unusual Punishment, The 8th Amendment.

To fire me from my job without even a semblance of due process is cruel and unusual punishment. It is deprivation of my constitutional rights. For this is

the State of California and its agents can be sued under the E.E.O. Act of 1972. It is my opinion that the State of California through its duly appointed agents did conspire and collude with the United States District Judge to obstruct the movement of my case in the Federal Courts so that it would be impossible for me to ever receive justice. Even the United States Court of Appeal got into the act by affirming a case which was never properly before the United States District Court (Hall [75-3314-IH]). This is cruel and unusual punishment of a most vicious kind (See E.E.O. Act of 1972 - Section 701(a)).

CONCLUSION

This Court should assume jurisdiction in this case. The Federal Courts in the State of California have not only acted less than honorably; but, by ruse and guile kept this case from coming to trial . . . for several years. In addition, it is

impossible for me to receive justice in the Federal Courts in California. The Court of Appeal is in a rather embarrassing position of having affirmed the decision of the United States District Court.

THEREFORE, IT IS RESPECTFULLY REQUESTED that this Court will assume jurisdiction; and in the interest of justice render its decision; and assess damages. And for mercy sake, end this ordeal for this Appellant.

Respectfully submitted,

Grover C. Hall

GROVER C. HALL
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Tel: (213) 737-2603

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

IN THE MATTER OF:

GROVER HALL,
Appellant

VS

THE STATE OF CALIFORNIA,
Robert A. Moody, Albert Ray,
Barbara Rosen, Darryl Bray,
Richard L Camilli, Employees
of the St. of California.
Appellees

No_____

NOTICE OF APPEAL: TO THE SUPREME COURT FROM THE DECISION OF THE USCA.

Code: 28 USC SEC. 1254

JURISDICTIONAL STATEMENT

CERTIFICATE OF SERVICE

This is to certify that the undersigned caused the foregoing document to be duly served by mailing a copy or copies of the same in the United States mail with postage prepaid on April 12, 1980 addressed to the following:

Hon. George Deukmejian, Atty-Gen.
Calif. St. Dept. of Justice
800 Tishman Bldg.
3580 Wilshire Blvd.
Los Angeles, Calif. 90010

Mr. E.M. Kritzman, Clerk
U.S. Dist. Court,
Central Dist. of Calif.
Federal Courthouse
312 N. Spring St.
Los Angeles, Calif. 90012

Mr. Emil E. Malfi, Jr., Clerk
U.S. Court of Appeals
For the Ninth Circuit
P.O. Box 547
San Francisco, California 94101

U.S. Department of Justice
Civil Rights Section-Employment
Washington, D.C. 20530

The Solicitor General
Washington, D.C.

DATED 4-12-80

Signed: Grover C. Hall

Grover C. Hall, Pro Per.
1059 S. Manhattan Pl.
Los Angeles, Calif. 90019

APPENDICES

DO NOT PUBLISH

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

GROVER C. HALL,
Plaintiff-Appellant,

vs.

THE STATE OF CALIFORNIA, Robert A. Moody, Albert Ray, Barbara Rosen, Darryl Bray, Richard L. Camilli, Employees of the State of California,
Defendants-Appellees.

No. 78-1039

MEMORANDUM

[February 6, 1980]

Appeal from the United States District Court
for the Central District of California

Before: CHOY and ANDERSON, Circuit Judges, and SMITH,* District Judge.

Appellant Hall, an employee of the State of California, was discharged in December 1972 for alleged incompetence and insubordination. He took an appeal to the California State Personnel Board. A hearing officer in a proposed decision found that there was no evidence to support Hall's charges of racial discrimination and found affirmatively that Hall was both insubordinate and incompetent. These findings were adopted by the State Personnel Board. A California Superior Court, on an application for a writ of mandate, refused relief and was affirmed by the California Court of Appeals. The California Supreme Court denied a hearing. Hall then filed an action under 42 U.S.C. § 2000e-5(f)(1) (*Hall v. California State Personnel Board*, No. CV 75-3314-IH (C.D.Cal., Nov. 21, 1975)) (*Hall*

*The Honorable Russell E. Smith, Senior United States District Judge for the District of Montana, sitting by designation.

A

No. 1), naming as defendants the California State Personnel Board and the members of such Board. Judgment was entered for the defendants, and that judgment was affirmed on appeal. *Hall v. California State Personnel Board*, No. 76-1162 (9th Cir., April 28, 1977).

In August 1977 Hall filed this action in the District Court for the Central District of California. It contains a potpourri of charges, but the jurisdiction of this court is dependent on the assertion that Hall was fired because he is a Negro rather than because of his incompetence and insubordination. The district court dismissed this action on the ground that *Hall No. 1* was res judicata.

Any possible claim under any federal law must in this case rest on the fact of racial discrimination. The California State Personnel Board specifically found that Hall was fired for insubordination and incompetence and also that his charges of racial discrimination were not valid. The district court in *Hall No. 1* said: "Whether the action is viewed as one under Title VII or under § 1983, the action is barred under principles of *res judicata* and collateral estoppel." The Court of Appeals affirmed. In *Hall No. 1* the court did not make a finding on the merits of the discrimination claim, but it did determine that the decision of the State personnel board was final and conclusive so far as Hall was concerned. It also held that the State administrative proceedings were not lacking in due process.

It is unnecessary here to get into the question of the extent to which state action may be conclusive as to federal civil rights claims. The decision in *Hall No. 1*, affirmed on appeal, said that the State action was conclusive. *Hall No. 1* is now final and that ends it, unless the change in parties makes the claims of res judicata and collateral estoppel unavailable or unless the decision in *Hall No. 1* is a nullity because the court lacked jurisdiction.

As to the change in parties: In *Hall No. 1* the California State Personnel Board and the members of such Board were parties. In this case the State of California and six named employees of the State are defendants. In this case and in *Hall No. 1* it was the action of the State of California accomplished through its agents which was in issue. Notwithstanding the juggling of parties, behind it all is the State of California and its agents who are alleged to have brought about the discriminatory act. Under these circumstances there is a requisite identity of parties.

The Court, in *Sunshine Anthracite Coal Co. v. Adkins*, 310 U.S. 381, 402-03 (1940), said:

> Where the issues in separate suits are the same, the fact that the parties are not precisely identical is not necessarily fatal. As stated in *Chicago, R. I. & P. Ry. Co. v. Schendel*, 270 U.S. 611, 620, "Identity of parties is not a mere matter of form, but of substance. Parties nominally the same may be, in legal effect, different, . . . and parties nominally different may be, in legal effect, the same." A judgment is *res judicata* in a second action upon the same claim between the same parties or those in privity with them. *Cromwell v. County of Sac*, 94 U.S. 351. There is privity between officers of the same government so that a judgment in a suit between a party and a representative of the United States is *res judicata* in relitigation of the same issue between that party and another officer of the government. See *Tait v. Western Maryland Ry. Co.*, 289 U.S. 620. The crucial point is whether or not in the earlier litigation the representative of the United States had authority to represent its interests in a final adjudication of the issue in controversy.

See also Mervin v. FTC, 591 F.2d 821 (D.C. Cir. 1978).

The same result would be reached by applying the doctrine of collateral estoppel. Under that doctrine, mutuality is not required. *Clark v. Watchie*, 513 F.2d 994 (9th Cir. 1975). A nonparty may assert a collateral estoppel if the issue has been actually and necessarily determined against the same adverse party in a prior suit. *See Montana v. United States*, 440 U.S. 147 (1979). Here *Hall No. 1* did determine that the action of the State personnel board was conclusive.

Hall asserts that the court in *Hall No. 1* was without jurisdiction because in that case he had not received a right-to-sue letter. The district court in *Hall No. 1* said:

> Plaintiff stated in open court that the only basis for federal jurisdiction which he asserts herein is Title VII of the 1964 Civil Rights Act as amended in Public Law 92-261, making said Title VII applicable to states and their agencies . . . .
>
> 75-3314
>
> . . . Plaintiff states that he presented his complaint of racial discrimination to the EEOC in 1973 and was advised by that agency, also in 1973, of its declination of the case for agency

prosecution and of his right to commence an individual action in federal court if he so chose.

The court's finding of jurisdiction was unchallenged until this action was filed. The court had jurisdiction to determine its jurisdiction, and that determination is binding on Hall. In *United States v. United Mine Workers*, 330 U.S. 258, 292-93 n. 57 (1947), the Court, quoting from *Carter v. United States*, 135 F.2d 858, 861 (5th Cir. 1943), said:

> "It cannot now be broadly asserted that a judgment is always a nuliity if jurisdiction of some sort or other is wanting. It is now held that, except in case of plain usurpation, a court has jurisdiction to determine its own jurisdiction, and if it be contested and on due hearing it is upheld, the decision unreversed binds the parties as a thing adjudged . . . . So in the matter of federal jurisdiction, which is often a close question, the federal court may either have to determine the facts, as in contested citizenship, or the law, as whether the case alleged arises under a law of the United States."

Had the mistake (assuming one) been brought about by the misrepresentation of the adverse party, equity might grant relief, but certainly there is no relief available to one who, by his own positive representations, causes the court to err.

The judgment is affirmed.

RECORDER-SUNSET PRESS, SAN FRANCISCO, CA 2-18-80—175

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES — GENERAL

Case No. CV 77-2911 AWJ Date Oct. 17, 1977

Title Glenn C. Hall vs. The State of Calif.

DOCKET ENTRY

PRESENT:

HON. A. Andrew Hauk, JUDGE

E. Guerrero, Deputy Clerk

Ira Newlander, Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

Glenn C. Hall, en propia

ATTORNEYS PRESENT FOR DEFENDANTS:

(no appearance)

PROCEEDINGS: Hearing pltfs motion to deny motion to dismiss complaint.

Order pltfs motion denied. Order defts motion to dismiss cont for hearing 10-31-77 advanced to this date for hearing. Order defts Motion to dismiss granted - matter was decided by Judge Hill on 11-21-75 (CV 75-3314 IH) affirmed on appeal & is res adjudicata. Order action dismissed with prejudice. Order copies to parties. Mailed copies to:

Glenn C. Hall
1059 So. Manhattan Place
LA 90019

Marilyn K. Mayer
Deputy Attorney General
800 Tishman Bldg
3580 Wilshire Blvd.
LA 90010

MINUTES FORM 11
CIVIL - GEN

Initials of Deputy Clerk EG

C

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

GROVER C. HALL, Plaintiff-Appellant, -vs- CALIFORNIA STATE PERSONNEL BOARD, and Members of such Board, Defendants-Appellees.	No. 76-1162 MEMORANDUM

Appeal from the United States District Court for the Central District of California

Before: DUNIWAY, CHOY and WALLACE, Circuit Judges

Hall appeals from the dismissal with prejudice of his Title VII action. We affirm.

Hall alleged that he was dismissed from his employment as a Disability Determination Counselor in the California Department of Rehabilitation because of his race. He bases the allegation upon the fact that he, a Black, was dismissed for insubordination while in an earlier and unrelated incident, a Caucasian was not dismissed for more aggravated behavior. The Notice of Punitive Action issued to Hall by the department charged that he threatened to kill one of his supervisors and performed substandard work in several particulars. We cannot and do not reach the merits of these contentions because the district court correctly dismissed the action on procedural grounds.

The order of the district court recites that Hall stated he received a "right-to-sue" letter from the EEOC in 1973. Since this suit was not filed until 1975, the action was untimely under 42 U.S.C. § 2000e-5(f)(1). Under that

section, it is a prerequisite to district court jurisdiction that judicial proceedings be commenced within 90 days from the receipt of the EEOC notice. Hall does not appear to challenge the assertion that he made the statement in open court. Moreover, he could not, for he has not provided a transcript of the proceedings before the district court as part of the record on appeal. In re Chapman Coal Co., 196 F.2d 779, 785 (7th Cir. 1952); accord, Herron v. Rozelle, 480 F.2d 282 (10th Cir. 1973); Bernards v. Johnson, 103 F.2d 567 (9th Cir. 1939), aff'd on other grounds, 314 U.S. 19 (1941). Hall's argument that his action was timely filed under 42 U.S.C. § 2000e-5(e) is unsound. That section governs the filing of complaints before the EEOC, not the filing of actions in the district courts.

As to constitutional claims, the district court, sua sponte, considered whether it could have jurisdiction over this cause of action, properly amended, under 42 U.S.C. § 1983 and 28 U.S.C. § 1343(3). The court determined that it could not because Hall had not named "persons" as defendants and because principles of res judicata would bar the action in any event since Hall had unsuccessfully presented this precise grievance in the state courts. This determination was not error. Sykes v. State of California (Department of Motor Vehicles), 497 F.2d 197 (9th Cir. 1974); Francisco Enterprises, Inc. v. Kirby, 482 F.2d 481, 485 (9th Cir. 1973); Clark v. State of Washington, 366 F.2d 678, 681 (9th Cir. 1966). In addition, the members of the Personnel Board were clearly acting in their discretionary or quasi-judicial official capacities when they performed the acts to which Hall seeks to attach liability. They were therefore immune to suit under section 1983. Sykes v. State of California, supra, 497 F.2d 197.

AFFIRMED.

FILED

NOV 21 1975

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GROVER C. HALL, Plaintiff, v. CALIFORNIA STATE PERSONNEL BOARD, and Members of Such Board, Defendants.	NO. CV 75-3314-IH JUDGMENT

Pursuant to the Order Dismissing Action With Prejudice filed contemporaneously herewith, IT IS ORDERED AS FOLLOWS:

1. Defendants shall have judgment against Plaintiff and Plaintiff shall take nothing by his action. Defendants shall have costs of $_____.

DATED: November 21, 1975.

IRVING HILL, Judge
United States District Court

E A

JS-6

FILED

NOV 21 1975

CLERK, U. S. DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
BY

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

GROVER C. HALL, Plaintiff, v. CALIFORNIA STATE PERSONNEL BOARD, and Members of Such Board, Defendants.	NO. CV 75-3314-IH ORDER DISMISSING ACTION WITH PREJUDICE

The within action filed by Plaintiff appearing in pro per came before the Court on November 20, 1975, for the hearing of the motion of Defendants filed October 17, 1975, to dismiss the action. The dismissal motion specifies two grounds, i.e., failure to state a claim and lack of subject matter jurisdiction. In considering the motion, the Court notes that Plaintiff filed on October 31, 1975, what he denominates a "Bill of Particulars". The Court notes also that in said document, it is referred to as an amendment to the complaint. As the Court announced in open court, the Court considers said document as an amendment to the complaint. Appearances were: Plaintiff appearing in pro per and Evelle J. Younger, Attorney General of the State of California, by Marilyn Mayer Moffett, Deputy Attorney General. The Court heard argument and has

E

considered the said motion together with the various documents filed in support thereof and in opposition thereto. Among said documents were various documents relating to a state court proceeding entitled Hall v. State Personnel Board of the State of California and Members of such Board, case No. C 66920 in the Superior Court of Los Angeles County, the administrative decision challenged therein as evidenced by a proposed decision of B. J. Showers, Hearing Officer, State Personnel Board, dated April 6, 1973, and a decision of the Board itself dated April 12, 1973, adopting said proposed decision, the opinion of the Court of Appeals affirming the trial court's denial of relief to Plaintiff in said Superior Court proceeding, said opinion being one filed July 24, 1975, and unpublished, and a postcard decision of the California Supreme Court denying hearing in said state proceeding.

It appears to the Court as follows:

(a) Plaintiff stated in open court that the only basis for federal jurisdiction which he asserts herein is Title VII of the 1964 Civil Rights Act as amended in Public Law 92-261, making said Title VII applicable to states and their agencies. As stated, infra, no claim is stated under said statute by the amended complaint, nor can any further amendment succeed in asserting a valid claim thereunder. The Court, therefore, lacks subject matter jurisdiction under said statute.

(b) The Court has considered the possibility that jurisdiction in this Court may also exist under 42 U.S.C.§1983. As will be seen, infra, no claim is stated under said statute and the Defendants are entitled to a dismissal of the action if viewed as one asserting a

claim thereunder.

(c) If the action is considered as one under Title VII and Public Law 92-261, the statute of limitations provided therein has admittedly expired and this Court lacks jurisdiction. Plaintiff states that he presented his complaint of racial discrimination to the EEOC in 1973 and was advised by that agency, also in 1973, of its declination of the case for agency prosecution and of his right to commence an individual action in federal court if he so chose. Under the provisions of 42 U.S.C. §2000e-5(f)(1), Plaintiff's right to file a federal court action expired within 90 days after receipt of such advice in the year 1973.

(d) Whether the action is viewed as one under Title VII or under §1983, the action is barred under principles of res judicata and collateral estoppel. The state court documents which are referred to above and which are before the Court, demonstrate that Plaintiff has made, in the state proceeding, factual contentions identical with those he makes here including contentions of racial discrimination. He has had his day in court and those contentions have been resolved against him and have been found to be groundless.

(e) If viewed as an action under §1983, the complaint must be dismissed for failure to state a claim. Plaintiff has not named any "person" within the meaning of said statute. The state and its subdivisions and agencies are not "persons" within the meaning of the statute and, therefore, are not proper Defendants thereunder. The Defendant Board is an agency of the state. Under the said statutes, persons may not be sued by description of the office they hold but must be individually named. No

individually named Defendant is sued herein.

Moreover, none of the contentions which are the gravamen of the complaint states any deprivation of federal constitutional rights. This is true with respect to the allegations of Plaintiff that Defendants have failed to observe the rules of procedure established by the state and reflected in the Defendants' Administrative Manual, that he was not informed of the charges against him before his dismissal and did not have an opportunity to answer or refuse to answer those charges (in this connection, the entire state file conclusively demonstrates that Plaintiff was informed of the charges and had the fullest opportunity to answer and litigate concerning them), that the investigation of his claim was not impartial and was unfair, that some other employee was not dismissed for conduct equally discourteous to that charged against him, that there was "administrative error" in finding him to be insubordinate, that the Hearing Officer incorrectly interpreted the meaning of the word "insubordination", that the Administrative Hearing Board failed to observe its own rules and policies, and that another employee who drew a loaded revolver and was more insubordinate than Plaintiff was not dismissed.

FOR THE REASONS STATED ABOVE, IT IS ORDERED AS FOLLOWS:

1. Defendants' motion is granted. Plaintiff shall take nothing by his action. The action is dismissed with prejudice. Defendants shall have judgment against Plaintiff with costs of $_____.

2. The Clerk shall transmit a copy of this Order and of the Judgment filed contemporaneously herewith by United States mail to counsel for the parties herein.

DATED: November 21, 1975.

IRVING HILL, Judge
United States District Court